

Message Text

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TO AMEMBASSY BONN PRIORITY

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E.O. 11652: N/A

TAGS: PFOR, GW

SUBJECT: EXPIRATION OF OFFICE TERMS OF PRESIDENT AND
VICE-PRESIDENT OF ARBITRAL TRIBUNAL AND MIXED COMMISSION
UNDER LONDON DEBT AGREEMENT

GENEVA FOR AMBASSADOR KEARNEY

REFERENCE: BONN 10943 (NOTAL)

1. YOU MAY AGREE TO RETROACTIVE EXTENSION (AS FROM
JUNE 30, 1972) OF TERM OF PRESIDENT OF TRIBUNAL AND
INDICATE THAT WE ARE PREPARED TO RECOGNIZE THE EFFECTIVE-
NESS OF ALL ACTIONS TAKEN BY THE TRIBUNAL IN THE YOUNG
LOAN CASES BETWEEN JUNE 30, 1972 AND THE DATE ON WHICH
THE GOVERNMENTS REFERRED TO IN PARAGRAPH (1) OF ARTICLE 1
OF THE CHARTER OF THE ARBITRAL TRIBUNAL FOR THE AGREEMENT
ON GERMAN EXTERNAL DEBTS EXTEND THE TERM OF THE PRESIDENT
AND THE VICE PRESIDENT OR, IN THE CASE OF THE LATTER,
APPOINT A SUCCESSOR. OUR TENTATIVE VIEWS WITH RESPECT TO
EXTENSION OF VICE PRESIDENT'S TERM FOLLOW.

2. WE ARE TROUBLED BY WICKSTROEM'S ADVANCED AGE.

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INASMUCH AS HE WILL BE 82 IN NOVEMBER, RETROACTIVE

EXTENSION OF HIS TERM WOULD MEAN THAT HE WOULD BE MEMBER OF TRIBUNAL IN HIS EIGHTY-SIXTH YEAR. (NO JUDGE OF THE INTERNATIONAL COURT OF JUSTICE HAS BEEN ELECTED AFTER REACHING SUCH AN AGE AND THE INSTITUT DE DROIT INTERNATIONAL HAS RECOMMENDED 75 YEARS AS THE UPPER AGE LIMIT FOR JUDGES).

3. IF HE REMAINS WELL, WE WOULD HAVE NO OBJECTION TO HIS CONTINUING TO PERFORM THE ADMINISTRATIVE FUNCTIONS WHICH HE HAS BEEN DISCHARGING WITH RESPECT TO THE YOUNG LOAN CASES. BUT IT IS POSSIBLE TO ENVISAGE CIRCUMSTANCES IN WHICH, NOTWITHSTANDING A DETERIORATION IN HIS HEALTH, HE MIGHT BE CALLED UPON TO DISCHARGE THE DUTIES OF THE PRESIDENT AND SIT AS A JUDGE IN THE ORAL PHASE OF THE LITIGATION WHICH WILL PROBABLY BE REACHED LATE IN 1976. WE WOULD BE RELUCTANT TO HAVE A MAN OF HIS AGE TAKE ON THE LATTER FUNCTION, WHICH, IF HE ONCE BEGAN TO EXERCISE IT, WOULD PROBABLY EXTEND TO THE TERMINATION OF THE PROCEEDINGS WHETHER OR NOT THEY WERE COMPLETED DURING THE TERM ENDING ON JUNE 30, 1977.

4. STANDING ALONE, THE DIFFICULTIES DESCRIBED IN THE PRECEDING TWO PARAGRAPHS MIGHT BE SUFFICIENT TO INDUCE US TO DECLINE TO AGREE TO ANY EXTENSION OF WICKSTROEM'S TERM. SUCH A COURSE WOULD, HOWEVER, RESULT IN A VACANCY ON THE TRIBUNAL. THE DEPARTMENT'S RECORDS RELATING TO THE APPOINTMENT OF THE PRESIDENT AND VICE PRESIDENT OF THE TRIBUNAL AT A TIME WHEN THE BODY HAD NO CASES ON ITS DOCKET SUGGESTS THAT PROMPT AGREEMENT ON A SUCCESSOR TO THE VICE PRESIDENT AT THIS JUNCTURE MIGHT BE MOST DIFFICULT TO ACHIEVE. ARTICLE 2 PARAGRAPH 2 OF THE CHARTER OF THE TRIBUNAL PROVIDES THAT IF THE GOVERNMENTS CANNOT AGREE ON A SUCCESSOR WITHIN ONE MONTH OF THE DATE ON WHICH A VACANCY OCCURS THE UNITED KINGDOM IS TO REQUEST THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE TO MAKE THE APPOINTMENT. THE POSSIBILITY OF EXACERBATING RELATIONS AMONG THE PARTIES IN AN EFFORT TO REACH AGREEMENT ON A SUCCESSOR TO WICKSTROEM AND THE RISK THAT THE PARTIES COULD LOSE ALL CONTROL OVER APPOINTMENT SHOULD THEY FAIL TO AGREE SUGGESTS THAT IT LIMITED OFFICIAL USE

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MIGHT BE USEFUL TO EXPLORE THE POSSIBILITY OF RETROACTIVELY EXTENDING WICKSTROEM'S TERM SUBJECT TO CERTAIN CONDITIONS AGREED BY THE GOVERNMENTS TO AVOID THE RISKS THAT HE MIGHT TAKE ON NEW FUNCTIONS OR INADEQUATELY PERFORM HIS PRESENT FUNCTIONS OWING TO DISABILITY OF HEALTH OR ADVANCING YEARS.

5. AS DR. RUMPF POINTS OUT, ARTICLE 2, PARAGRAPH 1 OF

THE CHARTER OF THE TRIBUNAL ESTABLISHES THAT THE TERM OF OFFICE OF PERMANENT MEMBERS OF THE TRIBUNAL IS FIVE YEARS. HOWEVER PARAGRAPH 6 OF THAT ARTICLE PERMITS THE FOUR GOVERNMENTS CONCERNED (US, UK, FRANCE, FRG) TO SHORTEN A TERM BY DISMISSING A MEMBER "BEFORE THE EXPIRY OF HIS

TERM OF OFFICE." WOULD IT BE POSSIBLE FOR THOSE GOVERNMENTS TO AGREE TO PROTECT THEMSELVES AND THE TRIBUNAL FROM DIFFICULTIES THAT MIGHT ARISE SHOULD WICKSTROEM'S HEALTH DECLINE OR SHOULD HE BE CALLED UPON TO EXERCISE THE FUNCTION OF PRESIDENT AT THE ORAL STAGE OF THE PROCEEDINGS? THE FIRST PROBLEM MIGHT BE MET BY ADVANCE AGREEMENT TO CONSULT ANNUALLY ON THE QUESTION OF WHETHER JUDGE WICKSTROEM'S HEALTH PERMITTED HIM TO CONTINUE ADEQUATELY TO PERFORM HIS PRESENT FUNCTIONS. IF ONE (OR MORE) OF THE GOVERNMENTS WERE ABLE TO MAKE A SHOWING THAT HE COULD NO LONGER DO SO, THE TERM WOULD EXPIRE. THE SECOND PROBLEM COULD BE MET BY AN UNDERSTANDING THAT SHOULD THE PRESIDENT DIE OR RESIGN OR BE PREVENTED FROM CARRYING OUT HIS DUTIES AFTER THE BEGINNING OF THE ORAL PHASE OF THE YOUNG LOAN CASES, PROCEEDINGS WOULD BE SUSPENDED IN ORDER TO PERMIT THE GOVERNMENTS TO COMPLY WITH ARTICLE 2 PARAGRAPH 2 OF THE CHARTER. IF THIS OR SOME OTHER WAY CAN BE FOUND TO DEAL WITH THE PROBLEMS MENTIONED, WE WOULD BE PREPARED TO CONSIDER RETROACTIVE EXTENSION OF WICKSTROEM'S TERM SUBJECT TO CONDITIONS AGREED TO BY THE PARTIES.

6. DEPARTMENT IS NOT INCLINED AT PRESENT TO ACCEPT RUMPF'S INTERPRETATION OF ARTICLE 2, PARAGRAPH 5, SENTENCE 2 OF THE CHARTER OF THE ARBITRAL TRIBUNAL. (ANTEPENULTIMATE PARAGRAPH OF HIS LETTER OF APRIL 19, 1974 TO PFUND). THIS TOPIC WILL BE DEALT WITH IN LATER MESSAGE.
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7. DEPARTMENT WOULD APPRECIATE EMBASSY'S FURNISHING INFORMATION ON TERMS OF OFFICE OF US, FRENCH, AND UK JUDGES AND ADVISING IF IT IS AWARE OF ANY POTENTIAL PROBLEMS WITH RESPECT TO THEIR SERVICE OR REAPPOINTMENT.

8. FOR PLANNING PURPOSES WE WOULD LIKE TO RECEIVE ANY INFORMATION EMBASSY RECEIVES BEARING ON WHETHER GERMANS WILL SEEK EXTENSION OF FILING DATE OF 30 SEPTEMBER FOR COUNTER-MEMORIAL. INGERSOLL

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